

PART 1001—INSPECTION OF RECORDS

Sec.

1001.1 Records available at the Board's office.

1001.2 Certified copies of records.

1001.3 Requests to inspect other records not considered public under 5 U.S.C. 552.

1001.4 Predisclosure notification procedures for confidential commercial information.

AUTHORITY: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

SOURCE: 62 FR 48954, Sept. 18, 1997, unless otherwise noted.

§ 1001.1 Records available at the Board's office.

The following specific files and records in the custody of the Secretary of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(a) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(b) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(c) All docket files, which include documents of record in a proceeding.

(d) File and index of instruments or documents recorded pursuant to 49 U.S.C 11301.

(e) STB Administrative Issuances.

§ 1001.2 Certified copies of records.

Copies of and extracts from public records will be certified by the Secretary. Persons requesting the Board to prepare such copies should clearly state the material to be copied, and whether it shall be certified. Charges will be made for certification and for the preparation of copies as provided in part 1002 of this chapter.

§ 1001.3 Requests to inspect other records not considered public under 5 U.S.C. 552.

Requests to inspect records other than those now deemed to be of a public nature shall be in writing and addressed to the Freedom of Information

Officer (Officer). The Officer shall determine within 10 days of receipt of a request (excepting Saturdays, Sundays, and legal public holidays) whether a requested record will be made available. If the Officer determines that a request cannot be honored, the Officer must inform the requesting party in writing of this decision and such letter shall contain a detailed explanation of why the requested material cannot be made available and explain the requesting party's right of appeal. If the Officer rules that such records cannot be made available because they are exempt under the provisions of 5 U.S.C. 552(b), an appeal from such ruling may be addressed to the Chairman. The Chairman's decision shall be administratively final and state the specific exemption(s) contained in 5 U.S.C. 552(b) relied upon for denial. Such an appeal must be filed within 30 days of the date of the Freedom of Information Officer's letter. The Chairman shall act in writing on such appeals within 20 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of any appeal. In unusual circumstances, as set forth in 5 U.S.C. 552(a)(6)(B), the time limit may be extended, by written notice to the person making the particular request, setting forth the reasons for such extension, for no more than 10 working days. If the appeal is denied, the Chairman's order shall notify the requesting party of his or her right to judicial review. Charges shall be made as provided for in § 1002.1(f) of this chapter.

§ 1001.4 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Interstate Commerce Commission or the Board shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For such purposes, the following definitions apply:

(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be

expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* Except as provided in paragraph (g) of this section, the Board, to the extent permitted by law, shall provide a submitter with prompt written notice, in accordance with paragraph (c) of this section, of receipt of an FOIA request encompassing its submissions. This notice shall either describe the exact nature of the information requested or provide copies of the records themselves.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(2) The information has been designated, in good faith by the submitter, as confidential commercial information at the time of submission or within a reasonable time thereafter. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.*

(1) Through the notice described in paragraph (b) of this section, the Board shall afford a submitter a reasonable period of time in which to provide it with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding the requested information.

(2) When notice is given to a submitter under this section, the Board also shall notify the requester that it has been provided.

(e) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its determination whether or not to disclose the requested information. Whenever the Board decides to disclose the information over a submitter's objec-

tion, it shall provide the submitter with written notice containing the following:

(i) A description or copy of the information to be disclosed;

(ii) The reasons why the submitter's disclosure objections were not sustained; and

(iii) A specific disclosure date, which shall be a reasonable number of days after the notice of intent to disclose has been mailed to the submitter.

(2) At the same time that notice of intent to disclose is given to a submitter, the Board shall notify the requester accordingly.

(f) *Notice of lawsuit.* (1) Whenever an FOIA requester brings legal action seeking to compel disclosure of confidential commercial information, the Board shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of confidential commercial information, the Board shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Board determines that the information requested should not be disclosed; or

(2) The information already has been published or otherwise officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) Disclosure is required by a Board rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to the Board that are to be released; and

(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or within a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(5) The information requested was not designated by the submitter as exempt from disclosure, when the submitter had an opportunity to do so at

the time of submission or within a reasonable time thereafter, unless the Board has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm; or

(6) The designation made by the submitter in accordance with these regulations appears obviously frivolous; in such case, the Board must provide the submitter only with written notice of any administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

PART 1002—FEES

Sec.

1002.1 Fees for records search, review, copying, certification, and related services.

1002.2 Filing fees.

1002.3 Updating user fees.

AUTHORITY: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

§1002.1 Fees for records search, review, copying, certification, and related services.

Certifications and copies of such tariffs, reports and other public records and documents on file with the Surface Transportation Board as may be practicable to furnish, as well as searches and copying of records not considered public under the Freedom of Information Act (5 U.S.C. 552), will be furnished on the following basis:

(a) Certificate of the Secretary, \$11.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$25.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of \$17.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of \$.80 per letter size or legal size exposure. A minimum charge of \$5.00 will be made for this service.

(e) The fee for search and copying services requiring ADP processing are as follows:

(1) A fee of \$45.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

(2) The fee for port minute time for the search will be set at the current rate set forth in the Board's contract with its time sharing computer contractor. Information on those charges can be obtained from the Chief, System Services Branch, Surface Transportation Board, Washington, DC 20423.

(3) Printing shall be charged at the rates of \$.10 per page of computer generated output with a minimum charge of \$.25. A charge of \$30 per reel of magnetic tape will be made if the tape is to be permanently retained by the requestor.

(f) The fees for search, review and copying services for records not considered public under the Freedom of Information Act are as follows:

(1) When records are sought for commercial use, requesters will be assessed the full and reasonable direct costs of document search, review and duplication. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) When records are not sought for commercial use and a request is made by an educational or noncommercial scientific institution, requesters will be assessed only for the cost of duplication (excluding charges for the first 100 pages). The term "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a